FILED

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NO._____

UNITED STATES SUPREME COURT

OCTOBER, 1994, TERM

HELEN CAVER
Petitioner

VERSUS

JOE GERACE
ADMINISTRATOR, LOUISIANA DEPARTMENT
OF EMPLOYMENT SECURITIES, ET AL
Respondents

ON APPLICATION FOR
WRITS OF CERTIORARI AND/OR
WRITS OF REVIEW OF THE
LOUISIANA STATE SUPREME COURT
AND APPEAL OF THE SECOND CIRCUIT,
STATE OF LOUISIANA

APPENDIX TO
PETITION FOR WRITS OF CERTIORARI
AND/OR WRITS OF REVIEW

CARLA S. ROBERTS
315 South College, Suite 161
Lafayette, LA 70503
Telephone: (318) 237-8827

Attorney for Petitioner

NO._____

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Judgment Rendered October 26, 1994
Application for rehearing may be filed within
the delay allowed by La. C.C.P. Art. 2166

NO. 26,176-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * * *

HELEN CAVER
Plaintiff- Appellant

VERSUS

JOE GERACE, ADMINISTRATOR,
LOUISIANA DEPARTMENT OF
EMPLOYMENT SECURITY, ET AL
Defendants-appellants

* * * * * *

Appealed from the
Third Judicial District Court for
the Parish of Lincoln, Louisiana
Trial Court No. 40,900

Honorable E. Joseph Bleich, Judge

* * * * * *

JORDAN, LITTLE & ROBERTS
By Carla S. Roberts
Counsel for
Plaintiff-Appellant,
Helen Caver

STATE OF LOUISIANA
DEPARTMENT OF LABOR
OFFICE OF EMPLOYMENT SECURITY
By J. Jerome Burden
Counsel for
Defendant-Appellant
State of Louisiana

LAW OFFICES OF BOBBY L. CULPEPPER
By Teresa C. Carroll
Counsel for
Defendant-Appellant
Bobby L. Culpepper

* * * * * *

Before SEXTON, HIGHTOWER & VICTORY, JJ.

NOT DESIGNATED FOR PUBLICATION
Rule 2-16.3 Uniform Rules,
Courts of Appeal.

SEXTON, Judge

This is an appeal by claimant, Helen Caver, of the denial of unemployment compensation benefits. We affirm.

Helen Caver went to work for attorney Bobby Culpepper on October 1, 1986, in Jonesboro, Louisiana, while studying to be a legal assistant at Northwestern State University. At this time she lived in Saline, Louisiana and traveled to and from work. She estimated that she traveled approximately 38 miles round trip each day. After completing her degree, she moved to Jonesboro and lived one block from Culpepper's office.

In March of 1992, Caver

requested a transfer to Culpepper's Ruston satellite office due to the fact that her husband maintained a job in Ruston and the two were contemplating a move there. Culpepper agreed. Claimant and her husband subsequently moved to Ruston where they purchased a new mobile home. On December 4, 1992, however, claimant received a memo to the effect that all "research personnel" would be returned to the Jonesboro office. Culpepper claimed that the move was necessary in light of his plans to move the satellite office to a smaller Ruston office which would provide no space for Caver, in addition to his feelings that the temporary arrangement had failed due

to difficulties in meeting deadlines, problems with communication and the distance between the two offices. On December 29, 1992, claimant met with Culpepper and informed him of the considerable expense that she incurred in the original move and the anticipated cost of her travel to an from the JonesborO office. Culpepper nevertheless informed claimant that he wanted her in the Jonesboro office on January 1st. December 29th was claimant's last day of employment with Culpepper.

Caver filed a claim for unemployment compensation benefits which was denied. The administrative law judge determined

that claimant left her employment for personal reasons which did not amount to "good cause attributable to a substantial change made to her employment." This finding included a determination that the move to Jonesboro was a temporary arrangement and that claimant's refusal to relocate amounted to a refusal to accept a reassignment in her duties. An appeal was taken to the board of review for the Office o Employment Security which affirmed the administrative law judge. The district court found the administrative law judge's findings to be supported by sufficient evidence and therefore conclusive. Review was thus confined to

questions of law.

Caver appeals, arguing error in the denial of her unemployment compensation benefits. She claims that her relocation to Jonesboro created a substantial change in employment due to the increased travel costs which she would be forced to encounter. She also argues a substantial change in her employment conditions based upon assertions that the move to Ruston office created a new employment contract which did not contemplate a temporary arrangement. Finally, claimant asserts that the administrative law judge erroneously considered hearsay evidence in reaching the decision to affirm the

denial of benefits.

The Louisiana Department of Labor Office of Employment Security joins Caver in this appeal asserting error in the denial of claimant's benefits and arguing that claimant demonstrated "good cause" for leaving her employment due to the increased travel costs associated with the return to the Jonesboro office.

DISCUSSION

LSA-R.S. 23:1634 sets forth the scope of judicial review in an unemployment compensation case. The findings of the board of review as to the facts, if supported by sufficient evidence and in the absence of fraud, shall be

conclusive, and review shall be confined to questions of law. Atlas Processing V. Administrator, Department of Employment Security, 584 So.2d 1187 (La. App. 2d Cir. 1991); Thomson V. State of Louisiana, 564 So.2d 756 (La. 2d Cir. 1990).

An individual shall be disqualified for benefits in he leaves employment without just cause attributable to a substantial change made to the employment by the employer. LSA-R.S. 23:1601. "Good cause" connected with a person's employment means cause connected with working conditions, ability of the employee to continue the employment, availability of

transportation to and from work and other factors which affected employee's ability or right to continue work or which affect the benefits he may receive from his employer either upon continuation of work or retirement. It is good cause connected with employment for an employee to quit his job when the work becomes unsuitable due to unanticipated working conditions. Banks V. Elledge, 535 So.2d 808 (La. App. 2d Cir. 1988).

We first address the propriety of Caver's claim that the administrative law judge erroneously considered hearsay evidence in deciding this case. Caver basically asserts that Teresa Carroll,

daughter of Culpepper, and present office administrator and associate attorney with the Culpepper firm, had no first hand knowledge of the employment agreement between Caver and Culpepper due to the fact that she was living in Baton Rouge and attending law school at the time of Caver's move to Ruston. She argues that any testimony presented by Carroll amounted to hearsay evidence which in not competent to overcome claimant's testimony. We do not agree that Carroll's testimony amounted to hearsay evidence.

When questioned about here knowledge to this situation, Carroll affirmed that she had independent knowledge of the situation and had,

in fact, advised her father that the move to Ruston should be conducted on a trial basis. Although away at school, she maintained continued contact with her father for the purpose of aiding him in making wise administrative decisions, an area in which she felt her father could improve. Nevertheless, Caver failed to object to the admission of the testimony and therefore waived any right to complain on appeal. Austin V. Pascarelli, 612 So.2d 201 (La. App. 4th Cir. 1992); writs denied, 614 So.2d 1256 and 614 So.2d 1257 (La. 1993).

We now address the remaining issues. The evidence presented at the hearing on this matter consisted

of the testimony of claimant, Caver, and Carroll. Carroll testified that the move to Ruston was temporary and conditional. She explained that the location of Caver in the Ruston office proved unsuccessful due to the difficulty encountered in meeting deadlines, keeping track of the allocation of time that Caver spent on different responsibilities, and in determining if Caver was in the office when she was supposed to be. Specifically, Carroll noted that Caver did not report when she was to be off from work. Caver admitted that she would only inform the personnel at the Ruston office. Further, Caver admitted that on at least one occasion there was

difficulty in obtaining help to type a brief, and she, therefor, had difficulty in meeting a deadline because of her location at the Ruston office. Carroll testified that there were numerous instances relating to impending deadlines in which it was necessary for a runner to be sent to Ruston to pick up briefs and then return to Jonesboro timely filing. She further testified about the necessity of keeping all files in the Jonesboro office and the resulting impracticality due to the location of the research staff in Ruston.

Caver testified that she was not aware that the move to Ruston was temporary and that her return to

the Jonesboro office was cost prohibitive. Caver admitted, however, that when she originally spoke to Culpepper, he informed her that if she could not keep up with the work, she would have to return to the Jonesboro office.

Relevant to the issue of transportation, Caver indicated that she would be required to travel a distance of 58 miles round-trip each day. Her calculations showed that it would cost her a total of $84.10 a week for travel expenses, plus meals. She earned $7.55 an hour. Carroll testified that Caver was to receive a five percent salary increase at the beginning of the year, and when questioned by the

court, she indicated that concessions could have been made for the increase in travel expenses had Caver been willing to negotiate. Caver admitted to receiving an annual wage increase and expressed little doubt as to whether or not she would have received an increase in 1993.

The administrative law judge found that the employee had "made arrangements with the employer to transfer to a Ruston suboffice on a trial basis." The administrative law judge went on to chronicle the difficulties in the new arrangement and concluded that the claimant left for personal reasons and not for good cause attributable to a

substantial change made to her employment under disqualifying conditions. Thus, the administrative law judge accepted the defendant's evidence that the new arrangement was on a trial basis only for plaintiff's benefit and that it failed to work out satisfactorily. The return of Caver to the Jonesboro office, therefore, was in accord with, and not a substantial change to, the agreement between Caver and Culpepper.

Under these circumstances, Caver's argument relating to the cost of transportation is irrelevant. However, we note that the increased costs does not appear to be onerous. Carroll testified to

a five percent salary increase to be given to Caver and a willingness to make concessions regarding travel arrangements had Caver been willing to discuss the matter. Caver never contested the fact that she would have received the increase. Further, the distance involved was only slightly longer that the distance plaintiff drove when she was originally hired.

Based on the foregoing, we find sufficient evidence to support the factual determinations of the board of review and no legal error in the ruling that the plaintiff did not leave her employment for good cause attributable to a substantial change made to the employment situation

under disqualifying conditions. Accordingly, the judgment is affirmed at appellant's cost.

AFFIRMED.

THE SUPREME COURT OF THE STATE

OF LOUISIANA

HELEN CAVER

VS. NO. 94-C - 2888

JOE GERACE

ADMINISTRATOR, LOUISIANA DEPARTMENT

OF EMPLOYMENT SECURITIES, ET AL

- - - - - -

IN RE; Caver, Helen; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; Parish of Lincoln 3rd Judicial District Court Div. "B" Number 40,900; to the Court of Appeal, Second Circuit, Number 26176-CA

- - - - - -

January 27, 1995

Denied.

CDK

PFC

WFM

A-20

JLD

HTL

BJJ

WATSON, J. would grant the writ.

VICTORY, J. not on panel.

Supreme Court of Louisiana
January 27, 1995

(Signed by the Clerk)
Clerk of Court
For the Court

LA DEPARTMENT OF LABOR
APPEALS UNIT
P.O. BOX 94094
BATON ROUGE, LA 70804-9094

****POSTMASTER: DO NOT FORWARD****

ALJ
BOBBY L. CULPEPPER, ATTY
525 E. COURT AVENUE
JONESBORO LA 71251-0000

NOTICE TO APPEAR FOR HEARING BEFORE

JAMES JONES
POST OFFICE BOX 2069
RUSTON LA 71273 0000

LOUISIANA DEPARTMENT OF LABOR
OFFICE OF EMPLOYMENT SECURITY
FAX: (318) 251-4175
TELEPHONE: 1-800-256-8020 OR
(318) 251-4115

02-02-92

CLAIMANT: CAVER, HELEN
SOCIAL SECURITY NO. 439-52-5002
APPEALED BY: X CLAIMANT - EMPLOYER

EMPLOYER: BOBBY L. CULPEPPER
DOCKET NO: R00058AT93

DATE OF HEARING: MONDAY, FEBRUARY 15, 1993

TIME: 9: 45 A.M.

PLACE OF HEARING: A P P E A L S
T R I B U N A L
OFFICE
1 1 0 2 E A S T
GEORGIA AVENUE
RUSTON LA

IN DETERMINING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS, THE ISSUE(S) BEFORE THE JUDGE IS (ARE) THE CORRECTNESS OF THE FOLLOWING;

THE CLAIMANT LEFT EMPLOYMENT BECAUSE OF DISLIKING CERTAIN WORKING CONDITIONS, I.E., RETURNING TO WORK IN JONESBORO, LA OFFICE, WHICH IS LEAVING WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYER. R.S. 23:1601(1)

******IMPORTANT******
BRING THIS NOTICE WITH YON AND REPORT DIRECTLY TO THE RECEPTION COUNTER.
DO NOT STAND IN LINE

***** ADDITIONAL INSTRUCTION ON BACK - READ CAREFULLY *****

(BACK SIDE OF NOTICE)

READ THESE INSTRUCTIONS CAREFULLY

This hearing will be conducted by an impartial Louisiana Administrative Law Judge and will be recorded for further review in the event that the Judge's decision is appealed. All testimony will be taken under oath or affirmation. Some hearings will be conducted by telephone when parties are 50 miles or more from the hearing site in order to save time and to allow parties to participate in the same hearing where it would not be practical for them to travel to a common hearing location. Other hearings will be conducted in person at an Employment Security Office.

HEARING PROCEDURES

In the case of an in-person hearing, the names of the parties will be called in the waiting room of the Employment Security Office. When a telephone hearing has been scheduled, at the scheduled hearing time (or within fifteen minutes thereafter) the Judge will telephone the parties who have notified the Appeals Tribunal that they wish to participate in the hearing. If the claimant or employer fails too notify the Appeals Tribunal that they wish to be called or fails to

be available to receive the call, or fails to appear, the Judge will conduct the hearing without the party and make a decision without the party's testimony. REMEMBER, THE TIME SHOWN ON THE HEARING NOTICE IS LOUISIANA TIME (CENTRAL TIME ZONE).

REPRESENTATIVES

You may be represented by an attorney or have witnesses at the hearing. It is not required. It is your responsibility to notify the Appeals Tribunal and have your representatives and/or witnesses at the number at which you will be called or with you at an in-person hearing. FEES FOR REPRESENTATION MUST BE APPROVED BY THE ADMINISTRATOR OF THE LA DEPT. OF LABOR.

SUBPOENAS

Witnesses who are reluctant to appear for the hearing at your request may be subpoenaed by the Judge. Requests for subpoenas must be submitted in writing and shall contain the name and home address of the witness and a specific statement of what is intended to be proven by his or her testimony. Such requests must be received at least 72 hours before the time of the scheduled hearing, excluding holidays and weekends.

EXHIBITS

Exhibits (written documents) which you want included in the hearing should be mailed as soon as possible to the Judge or brought with you to an in-person hearing. In matters involving health, a doctor's certificate should be sent to the Judge. Do not bring or mail the Judge a statement of your case. During the hearing you may refer to notes, but you will not be allowed to read your testimony.

WITHDRAWAL

The appellant may withdraw the appeal by sending a written request to the Judge prior to the time of the scheduled hearing.

POSTPONEMENTS

Postponements will only be granted for emergencies. Request for postponement should be made in writing and should be received by the Judge prior to the date of the hearing.

During a telephone hearing, remember the equipment being used does not permit more than one person to speak at a time. If the connection is broken and you are cut off, hang up your telephone and the Judge will call you back. Be prepared to present all testimony and evidence at the hearing or the

Judge cannot accept additional evidence after the hearing is closed unless good cause is shown to reopen the hearing. REQUESTS MADE LESS THAN (3) THREE DAYS BEFORE THE HEARING WILL ONLY BE GRANTED IF GOOD CAUSE IS SHOWN FOR THE LATE REQUEST.

IF YOU NEED ADDITIONAL INFORMATION, CONTACT THE NEAREST APPEALS TRIBUNAL

CLAIMANT: That's what I told him. I had no idea that this was temporary up here.

JUDGE: What did he say?

CLAIMANT: He kept saying that, "Well all I can say is Teresa thinks that all of us need to be together in Jonesboro".

JUDGE: Okay, anything else?

CLAIMANT: No Sir, that's it.

JUDGE; Okay, Ms. Carroll, I'd asked you earlier, do you have any final statements you want to make on behalf of the employer?

CARROLL: Inaudible - two talking at once.

CLAIMANT: I would like to submit a couple of ---

JUDGE: Wait, wait Ms. Caver. Go ahead Ms. Carroll.

CARROLL; As far as Ms. Caver has just said, I am Mr. Culpepper's daughter. I communicated with him on

a weekly basis while I was at LSU Law School. Just to say it bluntly, he did not have a lot of personal skills as far as managing a firm. He is not good at that, he never has been. He always delegated it to other people. When he suggested that Helen had wanted to move to the Ruston Office we talked about it while I was in Baton Rouge and I said I thought it would be okay as long as it was on some type of temporary arrangement so that we could make sure that everything was going to work out, that the work was gonna get done and that type of thing. That's how I had knowledge of it. And yes, it is was my suggestion for her to move to the Jonesboro Office after I talked to

-33-

(Cont) Daddy.

AFFIDAVIT

PARISH OF JACKSON

STATE OF LOUISIANA

BEFORE ME, the undersigned authority, personally came and appeared, **BOBBY L. CULPEPPER,** Attorney at Law, who, after being duly sworn, did depose and say that, to the best of his knowledge, information and belief, that when Mrs. Helen Caver was first employed by the Law Offices of Bobby L. Culpepper that she was driving back and forth from Saline, Louisiana to Jonesboro, at an approximate distance of fifty (50) miles round trip per day; that approximately two (2) years ago, a satelite office was opened in Ruston so Bobby L.

Culpepper would have a place to meet with clients in Ruston when he was in Ruston which was approximately four (4) hours per week; at some point late, an attorney was employed full time in the Ruston office but no other staff; that the secretaries of George Holstead did some typing for the attorney by the majority of the typing was done at the Jonesboro office; that after the attorney who was working in the Ruston office left the employment of the Law offices of Bobby L. Culpepper that Mrs. Caver asked if she could transfer to the Ruston office because her husband was living in Jonesboro and he was having to drive back and forth to Ruston; at that

time, Mrs. Caver was allowed to transfer to the Ruston office with the understanding that it might or might not work out and might or might not be a permanent arrangement; that, in fact, it did not work out and the determination was made that all research personnel (Mrs. Caver was employed as a paralegal) needed to be in the main office in Jonesboro, Louisiana; some of the reasons for this was that a courier had to go back and forth from the Jonesboro office to the Ruston office to pick up documents, carry documents, etc. several times per week; on occasions, Mrs. Caver would run out of anything to work on in the Ruston office and would be

without any work whatsoever until something could be carried to Ruston for her to work on; on several occasions, in order to meet last minute deadlines, someone had to go to Ruston to pick up papers to be mailed or filed; it just did not work out with part of the research staff in Ruston and part in Jonesboro; consequently, Mrs. Caver was requested to report to the Jonesboro office on January 4, 1993, instead of reporting to the Ruston office; Mrs. Caver reported to neither office on that date or thereafter; effective March 1, 1993, the Ruston office will be moved to a new location where there is not any room for any paralegals; said office

being at the office of Carl Cooper, in Ruston, Louisiana, and consisting of a very small office where I will be allowed to meet with people in Ruston probably about four (4) hours each week; the telephone in that office will have a call forwarding on it so if I am not present to answer the phone, the phone call will be forwarded to the Jonesboro office.

(SIGNED BY) BOBBY L. CULPEPPER

SWORN TO AND SUBSCRIBED before me a (sic) Jonesboro, Jackson Parish, Louisiana on this the _____ day of February, 1993.

(SIGNED BY) TERESA C. CARROLL
NOTARY PUBLIC